



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**FEB 14 2012**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jeff Lipman, P.C.  
Lipman Law Firm  
8450 Hickman Road  
Clive, Iowa 50325

Re: PestWest USA, LLC  
Docket No.: FIFRA-04-2012-3007(b)

Dear Mr. Lipman:

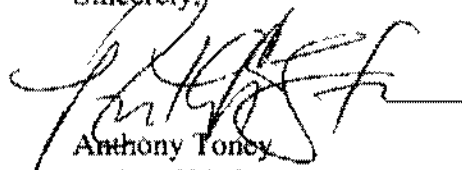
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the initial payment of \$2,080.82 of the assessed penalty of \$16,500 is due within 30 days from the effective date. Please ensure that the face of your client's cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Ms. Heather Russell either by telephone at (513) 487-2044 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call Ms. Dawn Johnson at (404) 562-9017.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of

your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Toney', written over the printed name.

Anthony Toney  
Acting Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

cc: Craig Bryant, FDACS  
State File No. 109-308-3057

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV

2012 FEB 14 PM 9:20

HEARING CLERK

In the Matter of:

PestWest USA, LLC.

Respondent.

Docket No.: FIFRA-04-2011-0079

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136/(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is PestWest USA, LLC.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Dawn Johnson  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9017.

5. Respondent is PestWest USA, LLC, a Florida corporation, located at 4363 Independence Court, Sarasota, Florida 34234.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

## **III. Specific Allegations**

7. On or about November 18, 2009, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 4363 Independence Court, Sarasota, Florida 34234.
8. During the aforementioned inspection, the "Bio-Gel Pro Kleen", "Dumpsterguard" and "Bio-Gel" products were identified as being sold and/or distributed by the Respondent. EPA has determined that at the time of the inspection, Respondent's advertisement on the internet made the following pesticidal claims:

“...is a range of biological products developed to eliminate the source of pest harborages.”

“...eliminating pest breeding and feeding sites...”

“...fewer flies, insects and rodents will be attracted to the treated area”

9. Because pesticidal claims were being made for the “Bio-Gel Pro Kleen”, “Dumpsterguard” and “Bio-Gel”, the products are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
11. Respondent “distributes or sells” pesticides. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
12. Pesticides that are sold and distributed in the United States are required to be registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
13. At the time of the inspection, the “Bio-Gel Pro Kleen”, “Dumpsterguard” and “Bio-Gel” products were not registered as pesticides with EPA.
14. The inspector collected documentation showing Respondent’s offers for sale and/or distribution of said pesticides.

15. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.
16. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on at least six (6) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. At the time of the inspection, the "Bio-Gel Pro Kleen", "Dumpsterguard" and "Bio-Gel" products were misbranded as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q) in that the product labels did not contain an establishment number and ingredient statement.
18. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least six (6) occasions and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
20. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any state unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
21. At the time of the inspection, Respondent had placed manufacturing/batch/lot codes on the "Bio-Gel Pro Kleen", "Dumpsterguard" and "Bio-Gel" products in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C.

§ 136j(a)(2)(L) and is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

22. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$16,500)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
26. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
27. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United

States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

#### **V. Final Order**

31. Respondent is assessed a civil penalty of **SIXTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$16,500)**. Eight payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days from the effective date of this CAFO. The subsequent seven payments shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **SIXTEEN THOUSAND SIX HUNDRED FORTY SIX DOLLARS AND FIFTY SEVEN CENTS (\$16,646.57)**. Respondent shall make quarterly payments as follows:

<b><u>Payment Number</u></b>	<b><u>Payment Due Date</u></b>	<b><u>Payment Amount</u></b>
1	within 30 days of filing of CAFO	\$2,080.82
2	within 120 days of filing of CAFO	\$2,080.82
3	within 210 days of filing of CAFO	\$2,080.82
4	within 300 days of filing of CAFO	\$2,080.82
5	within 390 days of filing of CAFO	\$2,080.82
6	within 480 days of filing of CAFO	\$2,080.82
7	within 570 days of filing of CAFO	\$2,080.82
8	within 660 days of filing of CAFO	\$2,080.83



32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

33. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Dawn Johnson  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

34. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) and all accrued interest shall become immediately due and payable on the 31<sup>st</sup> day from such due

date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

35. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
36. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the payment schedule set forth above, Respondent may pay the entire civil penalty of **SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$16,500)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a).
37. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
38. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent, its successors and assigns.
41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

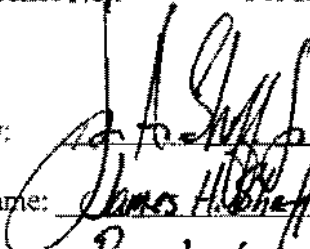
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**VI. Effective Date**

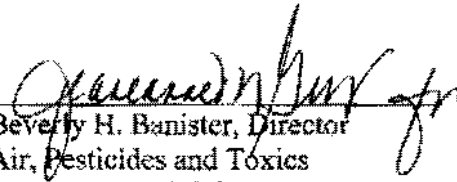
42. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

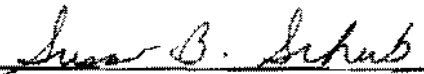
**Respondent:** PestWest USA, LLC  
**Docket No.:** FIFRA-04-2012-3007(b)

By:  (Signature) Date: 1/6/12  
Name: James H. Sheffer, Jr. (Typed or Printed)  
Title: President (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 2/3/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 14<sup>th</sup> day of February 2012

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of PestWest USA, LLC, Docket Number: FIFRA-04-2012-3007(b), to the addressees listed below:

Jeff Lipman, P.C.  
Lipman Law Firm  
8450 Hickman Road  
Suite 16  
Clive, Iowa 50325

(via Certified Mail, Return Receipt Requested)

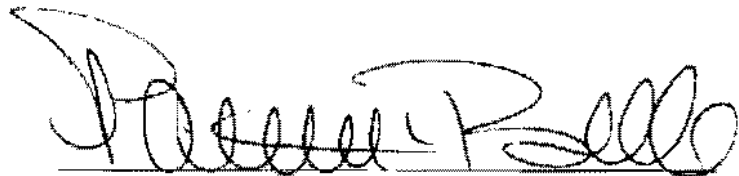
Dawn Johnson  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 2-14-12



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511